between parties contracting *per verba de praesenti,* this part of the common law was not adopted by them. The majority of American courts, however, holding that a common law marriage is invalid do so upon the ground that statutes providing that marriages shall be celebrated by certain persons and imposing a fine upon any unauthorized person solemnizing a marriage are mandatory and not directory. *Ann Cas.* 1912D, 597, and cases there cited. In several American states which formerly recognized a common law marriage the rule has been changed by statute. *Schumacher* v. *Great Northern Ry. Co.,* 23 N. D. 231; *Norman* v. *Norman,* 121 Cal. 620; *Ann Cas.* 1912D, 597. The principal case seems to be in accord with the legislative tendency to recognize as valid only a ceremonial marriage.

PARTIES—CAPACITY TO SUE AND BE SUED—UNINCORPORATED ASSOCIATIONS. —An unincorporated association was sued in its own name. *Held,* that even though there was a general appearance by the defendant, the court did not get jurisdiction, because a "suable party" is necessary to jurisdiction. *Grand International Brotherhood of Locomotive Engineers* v. *Green* (Ala., 1921), 89 So. 435.

At common law an unincorporated association cannot sue nor be sued in its own name, but only in the names of the individual members. DICEY ON PARTIES, Rule 20, p. 169. Many decisions support the view that the rule is one of form rather than of substance. In *Beatty and Ritchie* v. *Kurtz,* 2 Peters 566, the members of a committee sued in their own names in behalf of an association, and Justice Story said: "* * * we do not perceive any serious objection to their right to maintain the suit." See also *Guilfoil* v. *Arthur,* 158 Ill. 600. Failure of the defendant to take advantage of the want of capacity to sue on the part of an unincorporated association by means of a demurrer or plea waives the defect. *Franklin Union* v. *People,* 220 Ill. 355. In *Barnes* v. *Chicago Typographical Union No. 16,* 232 Ill. 402, an injunction issued against an unincorporated association in its own name was sustained. The want of capacity to be sued was described as "but a technical objection" in *Krug Furniture Co.* v. *Union of Woodworkers,* 5 Ont. L. Rep. 463. See, *contra, The Proprietors of the Mexican Mill* v. *The Yellow Jacket Silver Mining Co.,* 4 Nevada 40, where the court held that a suit brought in a co-partnership associate name was a "nullity." In *Crawley* v. *American Society of Equity,* 153 Wis. 13, the defendant, an unincorporated association, was sued in its own name. It answered and litigated the merits, and then raised the question of its capacity to be sued. The court said: "* * * in view of the tendency to more and more brush aside non-prejudicial technicalities in order that substantial justice may be done * * * if plaintiff so desires, the action may proceed to judgment against those who were members of the board of directors * * *." Under similar facts, the court in *Deems et al.* v. *Albany & Canal Line,* 7 Fed. Cas. No. 3736, held that it was too late for the defendant to object that it was not properly sued. Moreover, with respect to its capacity to sue or be sued, an unincorporated association is regarded exactly as a partnership. DICEY ON PARTIES (2d Am. ed.), p. 170. It has been held that where a partnership sued in its own name the

defendant waived the defect by going to trial on the merits. *Ortez* v. *Jewett & Co.*, 23 Ala. 662; *Moore* v. *Watts*, 81 Ala. 261; *Foreman* v. *Weil Bros.*, 98 Ala. 495; *Mitchell & Bro.* v. *Railton*, 45 Mo. App. 273; *Fowler & Wild* v. *Williams*, 62 Mo. 403. A judgment obtained by a partnership in the partnership name is valid. *Ives* v. *Muhlenburg et al.*, 135 Ill. App. 517; *Bennett* v. *Child*, 19 Wis. 362; (*dictum*) *Weldon* v. *Fisher*, 194 Mo. App. 573. *Contra: Hitch* v. *Gray & Co.*, 1 Marv. (Del.) 400; *Simmons et al.* v. *Titche Bros.*, 102 Ala. 317 (judgment by default). Where the defendant is sued in its partnership name and makes no objection, the defect is cured by verdict. *Seitz & Co.* v. *Buffum & Co.*, 14 Pa. St. 69; *Simonton et al.* v. *Rohm et al.*, 14 Col. 51. A judgment against a partnership in its partnership name is valid. In *Heavrin* v. *Lack Malleable Iron Co.*, 153 Ky. 329, the court said: "In such a case partners actually making defense for and on behalf of the partnership, and for and on behalf of themselves in the partnership name, will be treated as the real parties in interest and as the real defendants, and therefore bound by the judgment. Any other rule would make the administration of justice depend not on a fair and impartial trial but on mere tricks and subterfuges." *Contra: Weldon* v. *Fisher, supra; Metropolitan St. Ry. Co.* v. *Adams Express Co.*, 145 Mo. App. 371. The reason for describing a party by name is to identify him. Therefore, where parties without objection allow themselves to be designated by the name of an association, and appear in court under that name, there would seem to be no good reason why the court should not take jurisdiction over them.

RULE IN SHELLEY'S CASE—INTERPRETATION AND CONSTRUCTION OF DEEDS AND WILLS.—S conveyed the tract in question to his wife for life, remainder to his daughters, A and L, and their heirs after them, and in case either or both A and L should die without heirs of their bodies, then the tract to be divided between his son, L C, and his (L C's) heirs, and if only one should die without heirs, her half to be divided between the other and L C's heirs. L died without issue, and L C conveyed to M. In an action to try title between L C's children and M, *held*, that the words "heirs" and "heirs of the body" were used in a non-technical sense to mean children; that the words "either or" in the first condition were used by inadvertence, and thus L C's children were entitled to an undivided half of L's share in the tract. *Shugart* v. *Shugart* (Tex. Civ. App., 1921), 233 S. W. 303.

In a very similar case, the testator, after various specific gifts, left the residue of his real and personal property, comprising the bulk of his estate, to his wife for life, remainder one half to her heirs, or devisees if she should leave a will, and the other half to specified blood relatives of himself. The wife died intestate, and a few days later the testator became *non compos mentis*, remaining so until his death. In a bill praying for construction of the will, *held*, the Rule in Shelley's Case applies to the realty, and the wife would have taken a fee in one half had she lived, but since the devise lapsed the heirs of the testator are entitled thereto. *Belleville Savings Bank* v. *Aneshaensel* (Ill., 1921), 131 N. E. 682.

The Rule in Shelley's Case, that where, in the same instrument, a free-